IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 32818 of 2004(F)

O.S.116/00 OF MUNSIFF-MAGISTRATE COURT, ERATTUPETTA
CMA 10/02 OF SUB COURT, PALA

PETITIONER:

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1. RAMAKRISHNAN, S/O.NEELAKANDAN,
ELLACKATTU HOUSE, ADUKKAM KARA, POONJAR
VADAKKEKKARA VILLAGE.

2. PAPPACHAN, S/O.LUKOSE, NELLAVELLY HOUSE,
ADUKKAM KARA, POONJAR, VADAKKEKKARA VILLAGE.

3. SADANANDAN, S/O.KUNJUKOCHU,
THENGAPURACKAL HOUSE, ADUKKAM KARA,
POONJAR, VADAKKEKKARA VILLAGE.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

GOPALAN, S/O.ADITHAN, PODIPPARA HOUSE,
ADUKKAM KARA, POONJAR, VADAKKEKKARA VILLAGE.

BY ADV. SRI.LIJI.J.VADAKEDOM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF ORDER PASSED BY MUNSIFF COURT, ERATTUPETTA IN IA 962/01 DT.27/9/02

EXT.P2: COPY OF ORDER PASSED BY SUB COURT, PALA IN CMA 10/02 DT.29/6/04

EXT.P3: COPY OF JUDGMENT OF JFCM, ERATTUPETTA IN CC 199/01 DT.29/12/2003

EXT.P4: COPY OF COMMISSIONER REPORT DT.3/7/00 IN OS 116/00 OF MUNSIFF COURT, ERATTUPETTA

EXT.P5: COPY OF COMMISSIONER REPORT DT.5/2/02 IN OS 116/02 OF MUNSIFF COURT, ERATTUPETTA

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.32818 OF 2004

Dated 1st January 2007

J U D G M E N T

Respondents are defendants in O.S.116/2000 on the file of Munsiff court, Erattupetta. Respondent instituted the suit seeking a decree for permanent prohibitory injunction restraining petitioners from trespassing into plaint schedule property or constructing a motorable road through the property. At the instance of respondent learned Munsiff granted an order of temporary injunction. A commissioner inspected and submitted Ext.C1 report showing that no road is in existence through the property and only a way was available. Commissioner inspected the property once again at the instance of respondent and submitted Ext.C2 report. That report shows that the way was converted into a road subsequent to the order of temporary injunction. Respondent filed I.A.962/01 under Order XXXIX Rule 2(A) of Code of Civil Procedure for a direction to petitioners to restore the plaint schedule property to its original position. Under

Ext.P1 order learned Munsiff allowed that application. Petitioners challenged that order before Sub court, Pala in C.M.A.10/02. Under Ext.P2 order learned Sub Judge confirmed that order. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioners and respondent were heard.

3. Argument of learned counsel appearing for petitioners is that in respect of the alleged trespass by petitioners C.C.199/2001 was registered before Judicial First Class Magistrate court, Erattupetta and in that criminal case petitioners did not figure as accused and that criminal case was ultimately ended in acquittal and there is no evidence to prove that road was constructed by petitioners in violation of the order of temporary injunction and instead Ext.A3 copy of final report submitted before the Magistrate court and Ext.A5 FIR show that road was constructed by accused in the criminal case and not by petitioners and in such circumstances Ext.P1 order of learned Munsiff and Ext.P2 order of learned Sub Judge are to be quashed. Learned counsel appearing for respondent argued that in respect of the trespass and damages

caused to the property respondent filed O.S.99/03 before Munsiff court, Erattupetta against defendants in O.S.116/2000 as well as against some others and that suit has been decreed and no appeal has been filed and the decree is now being executed and in such circumstances no interference is warranted.

4. On hearing the learned counsel appearing for petitioners and respondent and going through Exts.P1 and P2 orders, I do not find any reason to interfere with Ext.P1 order as confirmed in Ext.P2 order, in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Fact that there was no road through plaint schedule property is clear from Ext.C1 report submitted by the Commissioner. Therefore, when learned Munsiff granted the order of temporary injunction, there was no road through the plaint schedule property. Ext.C2 report establish that subsequently a road was cut opened by widening the existing pathway. In such circumstances, findings in Exts.P1 and P2 that road has been constructed in violation of the order of injunction cannot be said to be illegal or irregular. Under Ext.P1 order learned Munsiff has only directed restoration of the plaint schedule property to its original position

as seen in Ext.C1 report. There is no reason to interfere with Exts.P1 or P2 orders. Learned Munsiff is to dispose the suit untrammeled by any observations in Exts.P1 and P2 orders and on the evidence to be recorded.

Writ petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.